

Message Text

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E.O. 11652:N/A

TAGS: ETEL, CA

SUBJECT: BORDER TV PROBLEM

1. BROADCAST INDUSTRY ATTORNEYS GOODELL, LANKLER AND ROSENBLOOM CALLED ON VINE APRIL 25 TO DISCUSS NEXT STEPS IN TV TALKS WITH GOC. RESULTS OF 90 MINUTE EXCHANGE SUMMARIZED BELOW.

2. RE SENATE HEARINGS ON BILL C-58, INDUSTRY REPS SAID THEY HAVE NO DOUBT SENATE WILL PASS BILL UNAMENDED BUT BELIEVE GOC DOES NOT WANT ROW OVER BILL AND MAY BE WILLING TO MAKE SOME CONCESSIONS TO AVOID FLAP. POSSIBILITY EXISTS SENATE COMMITTEE MAY BE ABLE EXTRACT GOVERNMENT UNDERTAKING NOT TO IMPLEMENT C-58 BROADCAST PROVISIONS UNTIL DISCUSSIONS WITH USG ARE COMPLETED OR SIMILAR FORMULATION. COUNSEL SAID BILL'S PROPONENTS WERE SAYING USG IS NOT CONCERNED AT C-58 IMPACT, AND THIS SERIOUSLY UNDERCUT COMPANIES EFFORTS. THEY URGED DEPARTMENT TO MAKE FORMAL STATEMENT OPPOSING BROADCAST PORTION OF BILL OR AT LEAST INDICATING WE CONSIDER C-58 IMPORTANT PART OF BROADCAST NEGOTIATIONS, IN ORDER TO MAKE COMPANY OPPOSITION MORE

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CREDIBLE. EVEN IF CHANGE IN BILL IS NOT POSSIBLE, THEY

ARGUED IT WOULD BE USEFUL TO KEEP C-58 ON THE TABLE IN DISCUSSIONS AS BARGAINING CHIP.

3. VINE NOTED THAT EVOLUTION IN DEBATE OF C-58 HAD MODERATED SOMEWHAT OUR INITIAL CONCLUSION THAT BILL WAS SOLID FAIT ACCOMPLI. IN OUR VIEW CONSIDERABLE INTERNAL OPPOSITION THAT HAD SURFACED HAD BEEN FACILITATED BY LOW-KEY USG APPROACH. IT IS IMPORTANT THAT U.S. NOT TAKE STAND ON BILL WHICH MIGHT DISADVANTAGE OPPOSITION AND COALESCE SUPPORT FOR BILL. PAST EXPERIENCE INDICATED U.S. OPPOSITION TO CANADIAN MEASURES HAS THIS TENDENCY.

4. VINE RECALLED HE HAD INCLUDED C-58 QUESTION IN JANUARY TALKS WITH GOC AND SAID THE DEPARTMENT IS PREPARED TO RETAIN ISSUE IN NEGOTIATIONS. HOWEVER, FORMAL U.S. STATEMENT TO THIS EFFECT COULD BE COUNTER-PRODUCTIVE. VINE SUGGESTED THAT COMPANIES STATE IN THEIR TESTIMONY THAT USG HAD INFORMED THEM IT CONTINUED TO VIEW QUESTION OF C-58 IMPLEMENTATION AS INTEGRAL PART OF BORDER TV PROBLEM AND APPROPRIATE SUBJECT OF OUR CONTINUING BILATERAL NEGOTIATIONS. DEPARTMENT WOULD FIND SUITABLE OCCASIONS AS WELL TO UNDERSCORE THE POINT. COMPANY COUNSEL AGREED WITH THIS PROCEDURE.

5. COUNSEL OFFERED AS VEHICLE TO JUSTIFY U.S. STATEMENT, FILING TRADE ACT COMPLAINT ADDRESSED TO C-58 AND DELETION TOGETHER. VINE NOTED SUCH ACTION WOULD BE SEEN TO BE INCONSISTENT WITH ONGOING NEGOTIATION PROCESS UNDER WAY. AS WITH JAMMING, UNILATERAL COMPANY ACTION WHILE TALKS IN PROCESS COULD ONLY IMPEDE DISCUSSIONS AND POSSIBILITY OF AGREEMENT. VINE QUESTIONED STRENGTH OF TRADE ACT THREAT IN ANY CASE AND SUGGESTED POSSIBLE ACTION BE LEFT AS FUTURE STRING TO COMPANY BOW. COUNSEL AGREED.

6. ATTORNEYS SAID THEY HAVE CLEAR IMPRESSION GOC IS NOT ACTIVELY ADDRESSING COMPANY PROPOSAL AND WILL ONLY MOVE FORWARD UNDER PRESSURE OF USG REQUEST FOR EARLY MEETING. JOHN TURNER HAD ADVISED THAT BOYLE AND CRTC COULD NOT BE EXPECTED TO MODIFY DELETION POLICY UNTIL QUESTION HAD BEEN ELEVATED TO POLITICAL LEVEL AND INSTRUCTIONS TO CHANGE LIMITED OFFICIAL USE

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POLICY SENT BACK DOWN. COMPANIES RECOGNIZED ARGUMENT COULD BE MADE THAT NO GOC DECISION OVER TIME, SO LONG AS THEIR BUSINESS WAS UNIMPAIRED, COULD BE FAVORABLE SITUATION, BUT IN THEIR JUDGEMENT DELAY WITHOUT PROGRESS WAS NOT LIKELY TO SERVE THEIR NEEDS. PASSAGE OF C-58 AND DECISION IN PENDING SUPREME COURT CASE WHICH ALMOST CERTAINLY WOULD GO AGAINST COMPANIES, ARE LIKELY TO STRENGTHEN GOC INTRANSIGENCE AND MAKE COMPROMISE MORE

DIFFICULT. INDUSTRY BELIEVED DEPARTMENT SHOULD PRESS FOR EARLY RESUMPTION OF TALKS.

7. VINE SAID HE AGREED IN GENERAL WITH COMPANY ASSESSMENT, BUT WE HAD SEEN SOME SIGNS GOC MAY HAVE GIVEN THE WORD THEY WANTED A WAY FOUND TO RESOLVE ISSUE AND HE FELT IT MIGHT WEAKEN OUR POSITION TO PUSH GOC TO DECISION ON COMPANY PROPOSALS WHEN REAL PROSPECT EXISTED THIS DECISION WOULD BE NEGATIVE, UNLESS USG HAD FALLBACK POSITION TO PROPOSE IN EVENT GOC REJECTED INDUSTRY PACKAGE. VINE ASKED COMPANIES WHAT OTHER FORMULAS FOR SETTLEMENT THEY HAD EXPLORED.

8. ATTORNEYS AGREED THAT GOC OBJECTIONS TO APPROVING COMPANY PRESENCE IN CANADA MADE IT HIGHLY UNLIKELY THEIR PROPOSALS WOULD BE ACCEPTABLE BASIS FOR AGREEMENT. JOHN TURNER HAD BEEN ASKED TO FIND OTHER FORMULAS OR FACESAVING WAY FOR GOC POLICY REVERSAL BUT HAD NOT BEEN ABLE TO COME UP WITH ANYTHING NEW.

9. VINE RAISED POSSIBILITY OF NON-SIMULTANEOUS DELETION WHICH HE SAID HAD BEEN FLOATED INFORMALLY AT TECHNICAL LEVEL WITHIN GOC. COUNSEL THOUGHT COMPLEX LEGAL PROBLEMS INVOLVED WOULD MAKE THIS APPROACH MOST DIFFICULT FOR GOC TO IMPLEMENT. FROM COMPANY POINT OF VIEW, HOWEVER, FINANCIAL CONSEQUENCES MIGHT BE MORE FAVORABLE EVEN THAN COMPANY PACKAGE. THEY AGREED TO DO MORE DETAILED COST BENEFIT ANALYSIS OF THIS APPROACH AND REPORT BACK. COMPANIES ALSO FIND THAT DIRECT COMPENSATION SCHEMES (E.G. IN RETURN FOR PAYMENT TO COMPANIES AFFECTED, GOC WOULD HAVE FULL UNCONTESTED RIGHT TO DELETE AND RESELL ALL ADVERTISING) MERITED FURTHER EXPLORATION BUT CARRIED RISK THAT ANY AMOUNT NEGOTIABLE WOULD BE FAR LESS LIMITED OFFICIAL USE

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THAN DESIRED.

10. IN SUMMING UP, VINE AGREED THAT USG IN NEAR FUTURE WOULD REQUEST GOC TO MEET IN FOLLOW-UP SESSION. HE SAID WE WOULD ATTEMPT TO CAST MEETING IN NARROW FOCUS OF REVIEW OF COMPANY PACKAGE AND GOC REACTION. IN MEANTIME WE WOULD HOPE TO RECEIVE ANY ADDITIONAL IDEAS COMPANY MIGHT COME UP WITH. BOTH SIDES AGREED TO STAY IN CLOSE TOUCH. SISCO

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